

## EFFECTIVELY INTERVIEWING BATTERED WOMEN<sup>1</sup>

To be effective in advocating for battered women within the legal system, whether as an advocate, civil attorney, prosecutor or law enforcement officer, the interviewer must learn as much as possible about the individual incidents in question, including exactly what happened, what evidence might be available, what significance the incident had for the survivor, and any other factors that might affect the outcome of a particular case. The interviewer should also have a general understanding of the relationship between the survivor and the abuser, the survivor's needs and desires, and the history of abuse. Often this information must be obtained in situations that are far less than desirable in terms of location and time.

This article provides a detailed framework for obtaining the best information available when interviewing battered women<sup>2</sup> while, at the same time, demonstrating respect for her experience, needs and concerns.

### Environment

Whenever possible, the interview should be conducted in a quiet, private and safe location. In many cases, a quiet and private location is an unavailable luxury when staff is forced to share space within a program or a crowded police facility or courthouse.

Unfortunately, advocates, officers and attorneys who work under these conditions become so used to them that they forget how it feels to a battered woman to tell her story, often including personal and/or embarrassing details, in a setting where the conversation might be overheard by others. Take the time to assess the space you use to conduct interviews and imagine yourself in the place of a battered woman. Is this a place where you would want to share personal details of your life? If not, look for ways to optimize the situation.

For example, if you are sharing space at a program, is there another space in the building that might be used? Could you and your coworker stagger appointments so that only one client is in the office at a time? If you are forced to have two or more clients in the same location at the same time, at minimum, keep your voice down and don't repeat intimate details of the client's story loudly enough for others to hear.

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<sup>2</sup> This article deals with the unique situations faced by battered women, therefore the pronoun "she" is used when referring to the client/survivor, but is equally useful for interviewing other types of crime victims or male victims of domestic violence.

If you are in law enforcement, are you interviewing survivors in the same room or space where you'd interview a suspect? Are there suspects in the area? Are other officers or detectives milling around the area? Is there some other space in the building where you can do this interview where there is privacy and, perhaps, even a little bit of comfort? Is it possible to conduct the interview in the survivor's home, if that is a comfortable place and not a crime scene?

If you are a prosecutor in a crowded courthouse and must talk to battered women in the hallway, be aware of people who are close enough to overhear your conversation. Take the time to walk to the end of the hall where there might be more privacy.

### **Explain your role**

Introduce yourself and explain your role. Interviewing isn't at all like counseling. While you can be supportive, you don't have the luxury of waiting weeks for a woman's story to unfold at her own pace. Unless she understands your role, especially if she has received counseling and is used to a non-direct style, she may feel that your questions indicate that you are questioning her truthfulness. Explain that you will have to ask direct questions so that you have a clear understanding of the facts in order to assist her and that doing so is not an indication that you don't believe her.

### **Confidentiality or the lack thereof**

After introducing yourself and explaining your role, before you ask the first question, explain whatever confidentiality your communication has under your state law. Remember that your program or agency's policy about confidentiality isn't a guarantee if it is not supported by law. If your communication is not protected by law, explain to her how the information she provides to you might be disclosed.

Also explain exceptions to confidentiality. Advocates are usually mandated reporters under their state's child protective services laws as well as having a duty to report direct threats.

Some people feel that explaining that they are mandated reporters will keep women from reporting abuse. It is true that battered women may avoid discussing the children initially but if you've established trust with her, the story will emerge. If child abuse is disclosed, you can then remind her that you told her you were a mandated reporter without having her feel betrayed and move on to problem solving. If you tell her that your communication is protected without disclosing the exceptions, you will lose her trust when you tell her that you have to report the child abuse.

If you are a victim/witness person in a police or prosecutors office, how much of what the survivor tells you will be passed on to others? Is there any confidentiality for this conversation?

For law enforcement, how much of what she tells you will end up in a public record? Let the survivor know that you will be sharing information with the prosecutor's office.

For both law enforcement and prosecutors, what information will be given to the defense and when?

### **Initial questions**

Start with "easy" questions to allow her time to warm up to the discussion. Ask about the nature of the relationship with the abuser, the length of the relationship, and the number of children and their ages. If time is available, ask about how her day was going before the incident. This is the time to begin to build rapport.

### **Open-ended questions**

When it is time to get into specific incidents, ask open-ended questions. There are several reasons for this. First, it helps to establish trust when you show a willingness to listen. If she senses that you don't have the time or the interest to hear her out, she will begin to edit the information in ways that may limit your understanding of the incident.

Second, people remember best when they tell their story in narrative form and in context. When you elicit a story by asking direct questions, she responds with just what you asked for and may not provide the important details that you didn't ask about. It is extremely common for the abuser's attorney to explore a line a questioning that comes as a surprise to the prosecutor or attorney representing the woman. Afterwards they ask her "why didn't you tell me that?" Her response: "you didn't ask me."

Note also that memories of trauma may be fragmented, out-of-order, or have gaps. Perception of time may also be distorted. This is a normal biological response to traumatic events.<sup>3</sup> When a battered woman is allowed to tell her story uninterrupted, she may begin to sort out the memories in ways that result in a more accurate and complete memory. Better that she does this in an interview

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<sup>3</sup> David Lisak, Ph.D. The Neurobiology of Trauma, online at: <http://www.nowldef.org/html/njep/dvd/pdf/neurobiology.pdf>

with you than on the witness stand as a result of questions by the abuser's attorney.

Third, hearing the story as a narrative gives you a better understanding of the emotional impact the incident had on her as well as the impact the story might have on a trier-of-fact, if properly presented. For example, a woman is lying on the floor wrapping Christmas presents when her husband walks up and kicks her in the stomach. The fact that she was wrapping Christmas presents isn't relevant to the resulting criminal charge, but it does paint a picture for the judge or jury. In this case, this picture shows that the attack was unprovoked, offsetting any bias that the trier-of-fact might have that both parties usually play a role in abusive incidents.

In some cases, the impact on the trier-of-fact can be described as the "outrage factor." In one case, a woman's shirt was torn open so that it wouldn't close and her shorts torn off. Her husband pushed her outside, essentially nude, in daylight on a cold, snowy day where anyone on the street might have seen her. These issues aren't necessarily relevant to the charges of tearing her clothes or pushing her, but the judge is likely to be outraged by the husband's actions and treat it differently than mere property damage and a shove or two.

Lastly, the truth is in the details. The more detailed her testimony, the more likely she will be seen as credible.

As you are listening to her story, ask only clarifying questions that are essential to your understanding of the story. The ability to truly listen is an important skill that can only be learned by purposeful practice. Become comfortable with silence. When you rush in with another question, you may interrupt her thought process and cut off additional information.

Listen not just to what is said, but also to what isn't said. Is there a gap in the story that you will need to ask about?

### **Follow up with specific questions**

Now that you have the general overview of the incident, you need to make sure that your impressions are correct. This is also the time to inquire about available evidence and to direct her attention to details that she might not have considered. The goal is to be able to see this incident as though you were watching a movie, seeing the incident frame-by-frame. The following are some examples of information to seek.

- When and where did it happen? Ask her to draw a diagram if it would help you to "see" the incident.
- What happened just before? Just after?

- What size are the victim and the offender?
- What witnesses are available? Interviewers often make the mistake of asking about eyewitnesses only. Look at a broader prospective. Is there a witness who saw her just before the incident who can testify that she wasn't injured and/or a witness who saw her just after the incident who can testify to her injury? Were there neighbors who might have seen or overheard something?
- What physical evidence is available? In addition to pictures of injuries, what about broken or damaged property, including torn or bloody clothing? Did the abuser try to prevent her from calling the police? If so, she may have a damaged phone or a picture of severed phone wires.
- Who called the police? If she, or someone in the immediate area, called while the incident was occurring, what might be heard on the 911 tape?<sup>4</sup> 911 tapes can be very powerful evidence in court, not just in terms of emotional impact but also as evidence that would contradict many typical defenses of abusers. If there is a 911 tape that would be helpful, it is important to see that it is preserved as quickly as possible. Most jurisdictions do not guarantee that tapes will be available for more 30 days. Nonetheless, make the effort to seek tapes for earlier incidents. While the police may only guarantee the availability of the tape for a limited time, it may still be available months later if the department has not disposed of it or reused the tape.
- If she doesn't know who called the police, ask who might have been aware of the incident and called the police? What might they have heard and/or seen? Tracking down this witness might provide important collaboration of her story.
- How did the police respond? Generally, it is a good idea to know how the police in your jurisdiction are responding to domestic violence calls, but knowing how they treated this woman will also give you an idea of how they might have written the report or how useful they might be as witnesses.
- Was there any important detail that she didn't tell the police or it appears the police ignored? If so, it might be helpful to the case to ask the police to do a supplemental report or to send an evidence technician to take pictures of physical evidence.

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<sup>4</sup> Some jurisdictions now make digital recording of 911 calls.

- Who is the first person she talked to after the incident, what did she say and what was her condition at the time? If the abuser was there when the police came, what did he say to them? Both types of statements may be admissible as an exception to hearsay, her statement is an excited utterance, his statement is an admission of a party. An excited utterance is a statement made by a witness following a sufficiently startling occurrence that produces a spontaneous and unreflective statement about the event without enough time passing to allow for fabrication. If statements to the police were not documented in the police report, it might still be possible to have them documented in a supplemental report if the officer clearly remembers the statements.
- What did this mean to you? Be aware of context. Sometimes you might work with a woman who seems to be more upset by an incident than the incident seems to justify. Don't assume that she is unusually sensitive. Ask what the incident meant to her. In some cases, an innocuous sounding statement may be a reference to a past beating or a prior threat. In one case, a woman's abuser tore a mass card in half and left it under the windshield wiper blade of her car. Asking what it meant to her, she revealed that her abuser had once beaten her when she was 5 months pregnant, resulting in a stillbirth several days later. The Mass card was from the funeral of that stillborn child and a reference to both that beating and the terrible loss she suffered as a result.
- What is the worst thing that the abuser will say about you relating to this incident or generally? The answer to this question will give you fair warning about the issues the abuser's attorney is likely to raise. In many cases, there is just enough truth in this line of questions to cause problems in the case if you aren't prepared to counter the distortion or exaggeration.

### **Explore inconsistencies**

Now is the time to explore inconsistencies in her story, remembering that often what appears to be an inconsistency is often explainable but that a lack of explanation will negatively affect her credibility.

Many times the inconsistency is created by a person leaving out details for fear that the listener will negatively judge them. A statement that you are not easily shocked and that you are not there to judge may be enough to convince her that it is safe to disclose.

Don't be afraid to respectfully challenge her story, *after* you have explained that you are asking these questions to get a better understanding of

what happened so that you can best assist her. Second, the bottom line is that if you don't understand the inconsistency, you can't explain it to others.

## **Exploring past abuse**

In many situations, the prior history of violence will be relevant to the court case. This is particularly true in proceedings for protective orders where the entire history of abuse is admissible. In criminal cases, a prosecutor may be able to argue that some of the prior bad acts of the defendant are relevant and admissible. In any case, whether admissible or not, it is important to have a sense of the history of abuse to better assist the survivor.

Most survivors do not keep a diary or journal of abusive acts and may find it hard to remember details or to place dates. When asking about past abuse, the following questions might be helpful to aid her in remembering specific incidents:

- Tell me about the first time you were abused? Most survivors can remember the first time, even if it was 20 years ago. In most cases, the first incident did not result in serious injury. It is remembered because it came as a shock and/or was the first time she began to reevaluate the relationship.
- Tell me about the worst incident and why was the worst for you? In many cases, this may not be the incident where she received the greatest injury but the incident that was most psychologically damaging or the most frightening.
- Tell me about the incident where you received the worst physical injury?
- Was there an incident that was witnessed by someone outside of your household? When was the first time your family became aware that you were being abused? Abusers often keep the abuse behind closed doors and pretend to be a caring partner to her family and friends. Allowing others to become aware of the abuse may be such an unusual event that the survivor may remember how that came about.
- Was there an incident that occurred at a special time for you, like a holiday, your birthday or Mother's Day, or some other event? These incidents may be remembered for one of the reasons above or because these incidents carried extra meaning for the survivor. Even battered women can have expectations of being treated well on Mother's Day and be extremely upset when what is supposed to be a special day is ruined. Or perhaps Christmas was ruined for the children when the abuser destroyed their presents.

## Exploring sexual violence

Research indicates a very high correlation between domestic violence and sexual assault. Conservatively, 50% of battered women report having been sexually assaulted by force or when they were unable to consent due to unconsciousness or serious impairment. When we consider that many victims “feel” forced to consent to sex acts in order to stop the violence or to prevent being physically assaulted if they say no, the number of survivors experiencing some form of sexual assault or sexual coercion is very high.

Not only might survivors not volunteer this information, they might not also tell you about the physical attack that accompanied the sexual assault when they do not want to discuss the sexual assault. For example, one woman’s estranged husband wrapped his hands around her throat and squeezed, cutting off her air supply. His penis was in her vagina at the time. It appeared that he had no intention of killing her at that time. He just wanted her to know that he could kill her whenever he decided to do so. This was not only a terrifying experience but also one that was terribly invasive and humiliating. For many years, she didn’t tell a soul about the strangulation because she couldn’t bring herself to tell the circumstances under which it happened.

It is also possible that a survivor may have experienced sexually related behaviors and not considered them to be sexual assault. Many women were raised to believe that a wife is responsible for her husband’s sexual satisfaction, regardless of her own wishes. In addition, some women may believe that all wives experience the same thing so it is nothing significant to talk about.

The author interviewed a woman who told her that she rushed home from work every day, sometimes driving reckless in order not to be late. When asked what would happen if she were late, she would have to go through a “vaginal exam.” She said this with disgust but also as though this was a common practice the author would be familiar with.

Asked to describe what a “vaginal exam” was, she explained that she was required to undress and allow her husband to put his face in her vaginal area because, he told her, he could smell if she’d had sex with another man. On some occasions, he would also insert his finger into her vagina to see if she was “wet,” indicating to him that she was sexually interested in another man.

These incidents were very humiliating to her, but being inexperienced when they married, she believed him when he said that these acts were “normal” things that husbands did.

So how does one explore this topic in a sensitive manner? First, don’t ask about “rape” or “sexual assault.” Again, the survivor might not see these

incidents as being either. These words are also very loaded terms. Start with some general questions, such as:

- What happens when he wants to have sex and you don't?
- Has he ever forced you do so something sexually that you weren't comfortable with?
- Has he ever committed any act related to sex that caused you pain or embarrassed you?
- Has he ever intentionally caused you pain or injury to your genital area or erogenous zones?

When you ask follow up questions, use her own language for body parts and sex acts.

Listening to someone describe these experiences may be very difficult to the interviewer. More than ever, it is important to listen without judgment and offer support.

### **Explain options and elicit discussion**

After you have gotten a clear understanding of the evidence, you can begin to discuss the available legal options. As you do so, elicit from her what she thinks of these options and how she thinks she will be affected by them. Remember that while domestic violence cases have many similarities, every case is individual. What works for one woman may be disastrous for another. Each woman is entitled to problem solving that reflects her own situation, not a cookie cutter approach.